

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5756

PETITION OF JOSE CHICAS
(Hearing held June 5, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, July 5, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The existing carport requires a variance of seven (7) feet as it is within one (1) foot of the side lot line setback and of five (5) feet as it reduces the sum of both side yards to thirteen (13) feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is eighteen (18) feet.

Medus Chicas, the petitioner's son, represented the petitioner at the public hearing.

The subject property is Lot 4, Block 18, Glenmont Hills Subdivision, located at 13003 Estelle Road, Silver Spring, Maryland, in the R-60 Zone (Tax Account No. 01196831).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner seeks a variance for the existing 37 x 10 foot carport with storage.
2. Mr. Chicas testified that the carport was built without a building permit and that the petitioner, at the time of construction, was unaware of the required setbacks. Mr. Chicas testified that the basement of the residence receives the runoff water from his lot and the neighboring properties and that the carport was constructed to prevent the basement from flooding.
3. Photographs of the area affected by the runoff water were entered into the record as Exhibit Nos. 11(a)-(d).

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no exceptional topographical or other conditions that are not shared by neighboring and adjoining properties. The Board finds that the property is similar in shape and size to other lots in the immediate neighborhood, as shown on Exhibit No. 8 (zoning vicinity map).

Photographs showed possible causes of basement flooding that could be corrected by other than the grant of the requested variance and the Board finds that the drainage problems of the lot could be handled by means other than the construction of a carport.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions

The Board finds that the existing structure is not the minimum reasonably necessary.

The petition does meet the requirements of Section 59-G-1.3(a) and (b), and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variances of seven (7) feet from the required eight (8) foot side lot line setback and of five (5) feet from the required eighteen (18) foot sum of both side yards for the existing carport are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 5th day of July, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.